



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 49

[EPA-HQ-OAR-2014-0606; FRL-9996-50-OAR]

RIN 2060-AU45

Amendments to Federal Implementation Plan for Managing Air Emissions from True Minor Sources in Indian Country in the Oil and Natural Gas Production and Natural Gas Processing Segments of the Oil and Natural Gas Sector

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to amend the Federal Minor New Source Review (NSR) Program in Indian Country and the Federal Implementation Plan (FIP) for True Minor Sources in Indian Country in the Oil and Natural Gas Production and Natural Gas Processing Segments of the Oil and Natural Gas Sector (National O&NG FIP). The amendment would potentially reduce, by up to 30 days, the time between a source owner/operator's submission of required Endangered Species Act (ESA)/National Historic Preservation Act (NHPA) screening documents and beginning construction. Specifically, the amendment would allow for concurrent, rather than sequential, submission of two sets of documents: Part 1 Registration Form (Part 1 Form) to register applicability under the National O&NG FIP, and documentation supporting completed screening procedures (screening procedures documentation) for the evaluation of potential impacts of their proposed projects on threatened or endangered species and historic properties (protected resources). The proposal also seeks to further clarify the 30-day period before construction may begin, and the potential forms

of written notification by the EPA Regional Office to source owner/operators. Finally, this proposal addresses minor edits to correct incorrect citations and cross references.

DATES: *Comments.* Comments must be received on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].**

Public Hearing: If anyone contacts us requesting to speak at a public hearing by **[INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**, we will hold a public hearing. Additional information about the hearing will be published in a subsequent **Federal Register** notice.

ADDRESSES: *Comments.* Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2014-0606, at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*e.g.*, on the Web, Cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>. Certain other material, such as copyrighted material, will not be placed on the Internet but may be viewed, with prior arrangement, at the EPA Docket Center. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the

Air and Radiation Docket and Information Center, EPA/DC, EPA William Jefferson Clinton West Building, Room 3334, 1301 Constitution Avenue, NW, Washington, D.C. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744 and the telephone number for the Air and Radiation Docket and Information Center is (202) 566-1742. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at: <http://www.epa.gov/epahome/dockets.htm>.

Public Hearing: For information on the public hearing, contact Ms. Pamela Long, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Policy Division (C504-01), Research Triangle Park, NC 27711; telephone number (919) 541-0641; email address: long.pam@epa.gov.

FOR FURTHER INFORMATION CONTACT: For general questions about this document, please contact Mr. Ben Garwood, New Source Review Group, Air Quality Policy Division, Office of Air Quality Planning and Standards (C504-03), Environmental Protection Agency, Research Triangle Park, North Carolina, 27711; telephone number (919) 541-1358; fax number (919) 541-4028; email address: garwood.ben@epa.gov.

To request a public hearing or information pertaining to a public hearing on this document, contact Ms. Pamela Long, Air Quality Policy Division, Office of Air Quality Planning and Standards (C504-01), Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number (919) 541-0641; fax number (919) 541-4028; email address: long.pam@epa.gov.

For questions about the applicability of this action to a particular source, please contact the appropriate EPA region:

- EPA Region 5 (Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin) – Ms. Genevieve Damico, Air Permits Section, Environmental Protection Agency, Region 5, Chicago, Illinois 60604; telephone (312) 353-4761; fax (312) 385-5501; email address: *damico.genevieve@epa.gov*.
- EPA Region 6 (Arkansas, Louisiana, New Mexico, Oklahoma, and Texas) – Ms. Bonnie Braganza, Air Permits Section, Multimedia Permitting and Planning Division, Environmental Protection Agency Region 6, Dallas, Texas 75202; telephone number (214) 665-7340; fax number (214) 665-6762; email address: *braganza.bonnie@epa.gov*.
- EPA Region 8 (Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming) – Ms. Claudia Smith, Air Program, Mail Code 8P-AR, Environmental Protection Agency Region 8, Denver, Colorado 80202; telephone number (303) 312-6520; fax number (303) 312-6520; email address: *smith.claudia@epa.gov*.
- EPA Region 9 (Arizona, California, Hawaii, Nevada, and Pacific Islands) - Ms. Lisa Beckham, Permits Office, Air Division, Air-3, Environmental Protection Agency Region 9, San Francisco, California 94105; telephone number (415) 972-3811; fax number (415) 947-3579; email address: *beckham.lisa@epa.gov*.
- All other EPA regions - For further information about minor sources in Indian country for your EPA region, please use to the Tribal New Source Review Program at <https://www.epa.gov/tribal-air>. Scroll down to the heading, “Regulatory Resources,” and click on “Tribal Minor New Source Review (NSR)” and click on “Tribal and Permitting Programs in EPA's Regional Offices” to access the links for tribal programs in each EPA Regional Office.

SUPPLEMENTARY INFORMATION: *Organization of This Document.* The information presented in this preamble is organized as follows:

- I. General Information
 - A. What entities are potentially affected by this action?
 - B. What should I consider as I prepare my comments for the EPA?
 - C. How can I find information about a possible hearing?
 - D. Where can I get a copy of this document and other related information?
- II. Purpose
- III. Background
 - A. Federal Minor NSR Program in Indian Country
 - B. National Oil and Natural Gas FIP
 - C. Source Registration under the Federal Minor NSR Program in Indian Country
 - D. Requirements under the National O&NG FIP Relating to Threatened or Endangered Species and Historic Properties
- IV. Summary of Proposed Amendments – Revision to the Registration Process
- V. Environmental Justice Considerations
- VI. Statutory and Executive Order Reviews
 - A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
 - B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs
 - C. Paperwork Reduction Act (PRA)
 - D. Regulatory Flexibility Act (RFA)
 - E. Unfunded Mandates Reform Act (UMRA)
 - F. Executive Order 13132: Federalism
 - G. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
 - H. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks
 - I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use
 - J. National Technology Transfer and Advancement Act (NTTAA)
 - K. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

I. General Information

A. What entities are potentially affected by this action?

Entities potentially affected by this proposal consist of owners or operators of facilities included in the following source categories that are located, or planning to locate, in an Indian reservation or in another area of Indian country (as defined in 18 U.S.C. 1151) over which an

Indian tribe, or the EPA, has demonstrated that the tribe has jurisdiction where there is no EPA-approved program in place and that are subject to the requirements of the Federal Minor NSR Program in Indian country.

TABLE 1 – SOURCE CATEGORIES AFFECTED BY THIS ACTION

Industry Category	NAICS Code ^a	Examples of Regulated Entities/ Description of Industry Category
Oil and Natural Gas Production/Operations	21111	<p>Exploration for crude petroleum and natural gas; drilling, completing, and equipping wells; operation of separators, emulsion breakers, desilting equipment, and field gathering lines for crude petroleum and natural gas; and all other activities in the preparation of oil and natural gas up to the point of shipment from the producing property.</p> <p>Production of crude petroleum, the mining and extraction of oil from oil shale and oil sands, the production of natural gas, sulfur recovery from natural gas, and the recovery of hydrocarbon liquids from oil and natural gas field gases.</p>
Crude Petroleum and Natural Gas Extraction	211111	Exploration, development and/or the production of petroleum or natural gas from wells in which the hydrocarbons will initially flow or can be produced using normal pumping techniques or production of crude petroleum from surface shales or tar sands or from

Industry Category	NAICS Code ^a	Examples of Regulated Entities/ Description of Industry Category
Natural Gas Liquid Extraction	211112	reservoirs in which the hydrocarbons are semisolids. Recovery of liquid hydrocarbons from oil and natural gas field gases; and sulfur recovery from natural gas.
Drilling Oil and Natural Gas Wells	213111	Drilling oil and natural gas wells for others on a contract or fee basis, including spudding in, drilling in, redrilling, and directional drilling.
Support Activities for Oil and Natural Gas Operations	213112	Performing support activities on a contract or fee basis for oil and natural gas operations (except site preparation and related construction activities) such as exploration (except geophysical surveying and mapping); excavating slush pits and cellars, well surveying; running, cutting, and pulling casings, tubes, and rods; cementing wells, shooting wells; perforating well casings; acidizing and chemically treating wells; and cleaning out, bailing, and swabbing wells.
Engines (Spark Ignition and Compression Ignition) for Electric Power Generation	22111	Provision of electric power to support oil and natural gas production where access to the electric grid is unavailable.

^a North American Industry Classification System.

This list is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be potentially affected by this action. To determine whether your facility could be affected by this action, you should examine the applicability criteria in the Federal Minor NSR Program in Indian country and the National O&NG FIP (40 CFR 49.153 and 49.101, respectively). If you have any questions regarding the applicability of this action to a particular entity, contact the appropriate person listed in the **FOR FURTHER INFORMATION CONTACT** section.

B. What should I consider as I prepare my comments for the EPA?

When submitting comments, remember to:

Identify the rulemaking docket by docket number and other identifying information (subject heading, **Federal Register** date and page number).

Follow directions. The proposed rule may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

Explain why you agree or disagree, suggest alternatives and substitute language for your requested changes.

Describe any assumptions and provide any technical information and/or data that you used to support your comment.

If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

Provide specific examples to illustrate your concerns wherever possible, and suggest alternatives.

- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

- Make sure to submit your comments by the comment period deadline identified.

Submitting CBI. Do not submit information containing CBI to the EPA through <https://www.regulations.gov> or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on any digital storage media that you mail to the EPA, mark the outside of the digital storage media as CBI and then identify electronically within the digital storage media the specific information that is claimed as CBI. In addition to one complete version of the comments that includes information claimed as CBI, you must submit a copy of the comments that does not contain the information claimed as CBI for inclusion in the public docket. If you submit any digital storage media that does not contain CBI, mark the outside of the digital storage media clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and the EPA's electronic public docket without prior notice. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 Code of Federal Regulations (CFR) Part 2. Send or deliver information identified as CBI only to the following address: OAQPS Document Control Officer (C404-02), OAQPS, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attention Docket ID No. EPA-HQ-OAR-2014-0606.

C. How can I find information about a possible hearing?

To request a public hearing or information pertaining to a public hearing regarding this document, contact Mrs. Pam Long, OAQPS, U.S. EPA, at (919) 541-0641 or long.pam@epa.gov on or before **[INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Additional information about the hearing, if one is requested, will be published in a subsequent **Federal Register** document.

D. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this **Federal Register** document will be posted at <https://www.epa.gov/nsr> and on the tribal NSR page at <https://www.epa.gov/tribal-air/tribal-minor-new-source-review>.

II. Purpose

The EPA proposes to amend the National O&NG FIP¹ to allow owners or operators of true minor sources to concurrently submit to the EPA Regional Office their Part 1 Form together with screening procedures documentation for the evaluation of potential impacts of their proposed projects on protected resources. The EPA Regional Office will approve the screening procedures documentation with the Part 1 Form prior to construction or modification of the proposed new and/or modified minor NSR source. We are also proposing to clarify that written notification by the EPA Regional Office may include email in addition to the standard letter, and when construction may begin after a Part 1 Form is submitted. Therefore, the EPA anticipates this proposal to allow contemporaneous submission of the screening procedures documentation and the Part I Form, and if finalized, will streamline the authorization of construction of minor oil and natural gas sources under the FIP. The EPA is also proposing to make a minor clarification to the Federal Minor NSR program in Indian country, specifically 40 CFR 49.160(c)(1)(iv), to clarify that the Part 1 Registration Form need not be submitted exactly 30 days before beginning construction, but rather at least 30 days before beginning construction. The EPA does not anticipate the proposed rule changes will result in any increase in environmental impact(s) or cost increase(s) for reviewing authorities or the regulated community.

¹ 40 CFR 49.101-49.105.

III. Background

A. Federal Minor NSR Program in Indian Country

In July 2011, the EPA exercised its authority under the CAA and the related regulations, including the authority under CAA section 301(d)(4), to promulgate the Federal Minor NSR Program in Indian country, a type of FIP, which was part of a larger rulemaking referred to as “Review of New Sources and Modifications in Indian Country.”² That action was initiated to address potential adverse impacts to air quality due to the lack of approved minor NSR permit programs to regulate construction of new and/or modified minor sources and minor modifications of major sources in much of Indian country. The EPA promulgated the Federal Minor NSR Program, in part, to ensure that air resources are protected by establishing a preconstruction permitting program to regulate emission increases resulting from construction and modification activities that were not already regulated by the major NSR permitting programs.

B. National O&NG FIP

The EPA issued the final National O&NG FIP on June 3, 2016.³ The National O&NG FIP was developed to protect air quality in Indian country due to the impact of new true minor sources and minor modifications at existing true minor sources in the oil and natural gas production and natural gas processing segments of the oil and natural gas sector that are locating or expanding in an Indian reservation or in another area of Indian country over which a tribe, or the EPA, has demonstrated that the tribe has jurisdiction. Accordingly, the FIP adopted legally

² “Review of New Sources and Modifications in Indian Country,” U.S. Environmental Protection Agency, 76 FR 38748, July 1, 2011, <https://www.gpo.gov/fdsys/pkg/FR-2011-07-01/pdf/2011-14981.pdf>.

³ See 81 FR 35943, 35946, June 3, 2016, <https://www.gpo.gov/fdsys/pkg/FR-2016-06-03/pdf/2016-11969.pdf>.

and practicably enforceable requirements to control and reduce air emissions from oil and natural gas production activities. The FIP applies to new and modified true minor sources in such areas of Indian country designated as attainment, unclassifiable or attainment/unclassifiable. (Note, on May 2, 2019, the EPA Administrator signed a final rule extending the geographic coverage of the National O&NG FIP to the Indian country portion of the Uinta Basin Ozone Nonattainment Area (i.e., the Uintah and Ouray Reservation).⁴)

The National O&NG FIP uses a streamlined “authorization to construct” approach for oil and natural gas sources to fulfill the EPA’s obligation under the Federal Minor NSR Program in Indian country to issue minor source NSR pre-construction permits. True minor sources in the oil and natural gas production and natural gas processing segments of the oil and natural gas sector are required to comply with the FIP, unless they opt out of the FIP to obtain a site-specific permit or are otherwise required to do so.

C. Source Registration under the Federal Minor NSR Program in Indian Country

The source registration requirements for true minor sources in Indian country are set out at 40 CFR 49.151 and 49.160.⁵ Sources complying with the National O&NG FIP must submit the Part 1 Form, containing specified information, at least 30 days prior to beginning construction. 40 CFR 49.160(c)(1)(iv). Such sources must also submit the Part 2 Registration Form within 60 days after the startup of production, and both parts of the Registration Form, in combination, satisfy the registration requirement. *Id.*

⁴ “Amendments to Federal Implementation Plan for Managing Air Emissions From True Minor Sources in Indian Country in the Oil and Natural Gas Production and Natural Gas Processing Segments of the Oil and Natural Gas Sector,” U.S. Environmental Protection Agency, 84 FR 21240, May 14, 2019, <https://www.govinfo.gov/content/pkg/FR-2019-05-14/pdf/2019-09829.pdf>.

⁵ See also 40 CFR 49.151(c).

D. Requirements under the National O&NG FIP Relating to Threatened or Endangered Species and Historic Properties.

In addition to the registration requirements, sources complying with the National O&NG FIP must fulfill requirements concerning potential impacts to protected resources. Under 40 CFR 49.104, these requirements generally may be satisfied in one of two ways, which, presently, may have different consequences relating to the submission of the Part 1 Form and beginning construction:

1) Where an agency other than the EPA (*e.g.*, the Bureau of Land Management) has already evaluated the potential impacts of the specific oil and gas activity on protected resources, the source may submit appropriate documentation of the other federal agency's protected resources review. In that case, the appropriate documentation of protected resources review should be submitted with the Part 1 Form, and the source may begin construction no sooner than thirty days later.

2) Where an assessment related to protected resources has not already been conducted by another agency, the owner or operator must follow a set of screening procedures to assess potential impacts on protected resources and receive approval of that assessment by the EPA Regional Office. In that instance, the EPA's confirmation that the source has satisfactorily completed the procedures must occur prior to the source's submittal of its Part 1 Form pursuant to 40 CFR 49.160(c)(1)(iv) and 40 CFR 49.104(a)(2). The EPA Regional Office has up to 30 days before it must either approve the screening procedures documentation or notify the owner/operator by letter that additional information is required. 40 CFR 49.104(a)(2)(i). As a practical matter, this means that, after submitting screening procedure documentation, the source

must wait at least 30 days before being able to submit its Part 1 Form, and then wait an additional 30 days before it can begin construction.⁶

IV. Summary of Proposed Amendments – Revisions to the Registration Process

As noted in Section III.D. of this document, in certain cases, submission of documentation of completion of the screening procedures, and the EPA's confirmation of satisfactory completion of the procedures, must occur prior to the source's submittal of its Part 1 Form. And, upon submittal of the Part 1 Form, the source must wait an additional 30 days before beginning construction. We believe it is reasonable, instead, to allow the owner or operator to submit the Part 1 Form together with the screening procedures documentation, rather than after the EPA Regional Office approval of the screening procedures documentation, possibly expediting the preconstruction permitting process. This approach would still afford at least a 30-day notification period before construction begins (similar to the process for sources relying on documentation of another federal agency's completion of protected resources evaluation under 40 CFR 49.104(a)(1)). In addition, the EPA Regional Office still has the responsibility to

⁶ On August 2, 2016, after the EPA issued the National O&NG FIP, the American Petroleum Institute (API) petitioned the Administrator to revise the FIP. Letter from Howard J. Feldman, API, to Gina McCarthy, EPA Administrator, August 2, 2016. Docket ID EPA-HQ-OAR-2014-0606. On August 2, 2016, API also petitioned for judicial review of the National O&NG FIP, No. 16-1271 (D.C. Circuit). More recently, on September 24, 2018, API sent EPA another inquiry and request relating to the National O&NG FIP. Letter from Matt Todd, API to Peter Tsirigotis, Director, EPA Office of Air Quality Planning and Standards, September 24, 2018. Docket ID EPA-HQ-OAR-2014-0606. Among the concerns raised by API were concerns relating to possible construction delays associated with the process under the National O&NG FIP for submission of the Part 1 Form. On November 27, 2018, the EPA responded to some of the issues raised by API and indicated, in part, that it was open to consideration of possible changes to the process relating to submission of the Part 1 Form. Letter from Jenny Edmonds, Acting Director, Outreach and Information Division, the EPA Office of Air Quality Planning and Standards, to Matt Todd, American Petroleum Institute, November 27, 2018. Docket ID EPA-HQ-OAR-2014-0606. This proposal, in part, responds to API's concerns and seeks comment on possible limited changes to the existing Part 1 Form submission process.

determine the adequacy of the screening procedures documentation, and if not adequate, the source may not begin construction.

Accordingly, we propose to amend the National O&NG FIP to authorize sources to submit Part 1 Forms concurrent with screening procedures documentation. We also propose to clarify that sources may begin construction under this FIP if two conditions have been met: (1) at least 30 days have passed from the date the Part 1 Form was submitted, and (2) the EPA Regional Office has provided notification that the screening procedures have been satisfactorily completed. So, a hypothetical timeline under this proposal would be:

- On day 1, a source would submit its Part 1 Form and screening procedures documentation;
- On day 15, the EPA could notify the source that it has satisfactorily completed the screening procedures;
- On day 31, the source could begin construction.

In another hypothetical timeline illustration under this proposal:

- On day 1, a source would submit its Part 1 Form and screening procedures documentation;
- On day 29, the EPA could notify the source that additional documentation is required and specify that it must be submitted within 15 days.
- If the owner or operator timely submits sufficient documentation, the date that construction may begin must shift to the date when the EPA subsequently notifies the owner or operator that the screening procedures have been satisfactorily completed, which would extend more than 30 days after submitting the Part 1 Form.

We also propose to make three additional, minor changes to related regulatory text. First, the rule currently specifically provides that the EPA Regional Office will provide notice of satisfactory completion of the screening procedures (or a determination that the documentation is not adequate) by letter to the owner or operator, as noted in 40 CFR 49.104(a)(2)(i). The EPA did not and does not intend that the notice be in the form of a letter sent via the United States Postal Service. The EPA proposes to clarify that the EPA Regional Office give written notification approving screening procedure documentation, which need not necessarily be in the form or manner of a traditional “letter,” but could, for example, be in an electronic format and transmitted via email (e.g. a signed .pdf document).

Second, to address potential confusion, we also propose to amend 40 CFR 49.160(c)(1)(iv) to clarify that the Part I Form need not be submitted exactly 30 days before beginning construction, but must be submitted at least 30 days before beginning construction.

Lastly, we take this opportunity to propose to make a technical correction to 40 CFR 49.104(a) to resolve a typographical or scrivener’s error and correct a reference to non-existent subsection (c)(1) or (2) of 40 CFR 49.

V. Environmental Justice Considerations

This action seeks to revise existing rules to further streamline the pre-construction process for true minor sources in the oil and natural gas sector in areas covered by the Federal Minor NSR Program in Indian country. It does not remove any of the prior rules’ environmental or procedural protections. Therefore, the EPA believes that this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income, or indigenous populations.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563:

Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was, therefore, not submitted to the Office of Management and Budget (OMB) for review.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is expected to be an Executive Order 13771 deregulatory action. This proposed rule is expected to provide burden reduction by reducing the waiting time before certain true minor new and modified oil and natural gas sources can begin construction. This streamlined authorization reduces the resource burden on the permitting authority and regulated community associated with submitting and reviewing permit applications for these sources in attainment and unclassifiable areas.

C. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities contained in the Federal Minor NSR Program in Indian country rule and has assigned OMB control number 2060-0003.⁷ This action amends the National O&NG FIP which provides a mechanism for authorizing construction for true minor sources in the oil and natural gas production and natural gas processing segments of the oil and natural gas sector locating or located in areas covered by the Federal Minor NSR Program in Indian country to satisfy the requirements of that rule other than

⁷ Since the Federal Minor NSR Program in Indian country rule was promulgated, the Information Collection Request (ICR) has been renewed and approved by OMB twice. The most recent approval extended the ICR until October 31, 2020. The ICR covers the activities of the National O&NG FIP. For more information, go to: https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201702-2060-005.

by obtaining a site-specific minor source permit. Because it substitutes for a site-specific permit, which would contain information collection activities covered by the Information Collection Request for Federal Minor NSR Program in Indian country rule issued in July 2011, neither the proposed amendments nor the National O&NG FIP impose any new obligations or new enforceable duties on any state, local or tribal government or the private sector.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule. The EPA analyzed the impact on small entities of streamlined permitting under the National O&G FIP and the Federal Minor NSR Program in Indian country rule⁸ and determined that it would not have a significant economic impact on a substantial number of small entities. This action merely modifies the timing to allow a submission of required documentation at an earlier point in the regulatory process. We have, therefore, concluded that this action will have no net regulatory burden for all directly regulated small entities.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandates, as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes

⁸“Review of New Sources and Modifications in Indian Country,” U.S. Environmental Protection Agency, 76 FR 38748, July 1, 2011, <https://www.federalregister.gov/articles/2011/07/01/2011-14981/review-of-new-sources-and-modifications-in-indian-country>.

no enforceable duty on any state, local or tribal government or the private sector. In material part, it simply modifies the permissible time-frame for submission of otherwise required forms to streamline the National O&NG FIP and Federal Minor NSR Program in Indian country.

F. Executive Order 13132: Federalism

This action does not have federalism implications. It would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

G. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This action has tribal implications. However, it will neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law. Consistent with the EPA Policy on Consultation and Coordination with Indian Tribes (May 4, 2011),⁹ the EPA offered consultation on this proposed action. The EPA conducted outreach on issues related to the Federal Minor NSR Program in Indian country and the National O&NG FIP via ongoing monthly meetings with tribal environmental professionals.¹⁰

As this amendment, if finalized, is implemented, we will continue to provide regular outreach to tribes to ensure we address issues concerning the FIP if and when they arise. The EPA is available for consultation with any interested tribe.

H. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the EPA does not believe the

⁹ For more information, go to: <https://www.epa.gov/tribal/epa-policy-consultation-and-coordination-indian-tribes>.

¹⁰ These monthly meetings are general in nature, dealing with many air-related topics, and are not specific to this proposed action.

environmental health or safety risks addressed by this action present a disproportionate risk to children.

I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act (NTTAA)

This action does not involve technical standards.

K. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes this action does not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations.

Through this amendment, we seek to further streamline the process for true minor sources in the oil and natural gas sector in areas covered by the Federal Minor NSR Program in Indian country .

This action does not remove any of the prior rules' environmental or procedural protections.

List of Subjects in 40 CFR Part 49

Environmental protection, Administrative practices and procedures, Air pollution control, Indians, Indians-law, Indians-tribal government, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: July 3, 2019.

Andrew R. Wheeler,
Administrator.

For the reasons set forth in the preamble, 40 CFR part 49 is proposed to be amended as follows:

PART 49—INDIAN COUNTRY: AIR QUALITY PLANNING AND MANAGEMENT

1. The authority citation for part 49 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

Subpart C--General Federal Implementation Plan Provisions

2. Amend §49.104 by:

- a. Revising paragraph (a) introductory text;
- b. Revising paragraph (a)(2) introductory text;
- c. Revising paragraph (a)(2)(i) introductory text;
- d. Revising paragraph (a)(2)(i)(B); and
- e. Revising paragraph (a)(2)(ii).

The revisions read as follows:

§49.104 Requirements regarding threatened or endangered species and historic properties.

(a) *What are sources required to do to address threatened or endangered species and historic properties?* An owner/operator subject to the requirements contained in §§49.101 through 49.105 to satisfy its obligation under §49.151(c)(1)(iii)(B) to obtain a minor NSR permit shall meet either paragraph (a)(1) or (2) of this section, as appropriate.

(1) * * *

(2) *Screening procedures completed by the owner/operator.* The owner/operator shall submit to the EPA Regional Office (and to the relevant tribe for the area where the source is located/locating) documentation demonstrating that it has completed the required screening procedures specified for consideration of threatened or endangered species and historic

properties and received written confirmation from the EPA stating that the owner/operator has satisfactorily completed these procedures prior to beginning construction of a new true minor source or minor modification of a true minor source. The completed screening procedures may be submitted together with the source's Part 1 Registration Form pursuant to §49.160(c)(1)(iv). (The procedures are contained in the following document: "Procedures to Address Threatened and Endangered Species and Historic Properties for the Federal Implementation Plan for Managing Air Emissions from True Minor Sources in Indian Country in the Oil and Natural Gas Production and Natural Gas Processing Segments of the Oil and Natural Gas Sector," <https://www.epa.gov/tribal-air/tribal-minor-new-source-review>). Review of your submittal will be conducted by the EPA Regional Office in accordance with the procedure in paragraphs (a)(2)(i) and (ii) of this section:

(i) Within 30 days of receipt of your documentation, by written notification to you, the EPA Regional Office must provide one of the following determinations:

(A) * * *

(B) The documentation is not adequate, and additional information is needed. If the initial submittal is deficient, the EPA Regional Office will note any such deficiencies and may offer further direction on completing the screening procedures. Once you have addressed the noted deficiencies, you must resubmit your revised screening procedure documentation for review. An additional 15-day review notification period will be used for the EPA Regional Office to determine whether the listed species and/or historic property screening procedures have been satisfied. If the EPA Regional Office makes such a determination, they will send you written notification stating that conclusion.

(ii) You must obtain written notification from the EPA Regional Office indicating that the source has adequately completed the screening procedures. The EPA Regional Office may send written notification by mail, email, or any other written means of notification. You may not begin construction under this FIP until the following two conditions are met: (1) at least 30 days has passed from the date the Part 1 Registration Form was submitted, and (2) the EPA Regional Office has provided this notification.

* * * * *

3. Amend §49.160 by revising paragraph (c)(1)(iv) to read as follows:

§ 49.160 Federal Minor New Source Review in Indian Country.

(c) ***

(1) ***

(iv) Minor sources complying with §§ 49.101 through 49.105 for the oil and natural gas production and natural gas processing segments of the oil and natural gas sector, as defined in § 49.102, must submit the Part 1 Registration Form, at least 30 days prior to beginning construction, that contains the information in paragraph (c)(2) of this section. The Part 2 Registration Form, including emissions information, must be submitted within 60 days after the startup of production as defined in § 49.152(d). The source must determine the potential for emissions within 30 days after startup of production. The combination of the Part 1 and Part 2 Registration Forms submittals satisfies the requirements in paragraph (c)(2) of this section. The forms are submitted to the EPA instead of the application form required in paragraph (c)(1)(iii) of this section. The forms are available at: <https://www.epa.gov/tribal-air/tribal-minor-new-source-review> or from the EPA Regional Offices.

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[FR Doc. 2019-14885 Filed: 7/12/2019 8:45 am; Publication Date: 7/15/2019]